

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSHUA E. MURRAY,

No. C-06-1306 MMC

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ADMINISTRATIVE
RELIEF; DENYING AS MOOT
ASTRAZENECA'S MOTION TO STAY;
DISMISSING ACTION WITHOUT
PREJUDICE**

ASTRAZENECA PHARMACEUTICALS,
L.P., et al.,

Defendants

Before the Court is plaintiff's motion for administrative relief, filed July 28, 2006, by which plaintiff requests the Court dismiss the above-titled action without prejudice. Defendants AstraZeneca Pharmaceuticals, L.P., and AstraZeneca, L.P. (collectively, "AstraZeneca") have filed opposition, to which plaintiff has replied. Defendant Eli Lilly & Company ("Eli Lilly") has not filed opposition or other response to plaintiff's motion. Also before the Court is AstraZeneca's motion for administrative relief to stay the action, pending a decision by the Judicial Panel on Multidistrict Litigation ("MDL Panel") as to whether plaintiff's claims against AstraZeneca should be transferred to the Middle District of Florida for inclusion in In re Seroquel Products Liability Litigation, MDL No. 1769.

A plaintiff is entitled to a dismissal without prejudice unless the defendant demonstrates it will "suffer some plain legal prejudice as a result of the dismissal." See Hamilton v. Firestone Tire & Rubber Co., 679 F. 2d 143, 145 (9th Cir. 1982).

1 Plaintiff's counsel, apparently anticipating the transfer of his claims against
2 AstraZeneca to the Middle District of Florida, states plaintiff does not wish to proceed with
3 his claims therein, preferring instead to refile in a state court, in the event plaintiff decides
4 to refile at all. In opposition, AstraZeneca argues a refiling would defeat the purposes of
5 the MDL Panel's order creating multidistrict litigation. AstraZeneca, however, cites no
6 authority holding such result constitutes cognizable prejudice for purposes of defeating
7 plaintiff's motion to dismiss. Further, plaintiff's claims arise under state law, and "[t]he
8 possibility that plaintiffs may gain a tactical advantage by refiling in state court is insufficient
9 to deny a voluntary motion to dismiss without prejudice, especially when state law is
10 involved." See American Nat'l Bank and Trust Co. v. BIC Corp., 931 F. 2d 1411, 1412
11 (10th Cir. 1991); see also Wetlands Water Dist. v. United States, 100 F. 3d 94, 97 (9th Cir.
12 1996) (citing favorably to American Nat'l Bank). Consequently, AstraZeneca has not
13 shown it will be prejudiced if plaintiff's motion is granted.¹

14 AstraZeneca alternatively argues that any dismissal without prejudice should be
15 conditioned on plaintiff's refiling his complaint in a federal district court with proper venue,
16 not adding any defendant that would destroy diversity, and not objecting to transfer to the
17 MDL proceeding in the Middle District of Florida. In short, the conditions would require any
18 refiled action to be litigated in the Middle District of Florida. AstraZeneca cites no authority
19 in support of the imposition of such conditions and, under the circumstances pertaining
20 herein, the Court finds such conditions are not warranted

21 Accordingly, plaintiff's motion is hereby GRANTED, and the above-titled action is
22 DISMISSED without prejudice. AstraZeneca's motion to stay is hereby DENIED as moot.

23 **IT IS SO ORDERED.**

24 Dated: August 9, 2006

25 
MAXINE M. CHESNEY
United States District Judge

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27
28 ¹As noted, Eli Lilly has not responded to the motion and, consequently, has made no
showing with respect to prejudice.